

YES / NO
EXHIBITS

CASE NO. 2020 CA 1884

DATE: 2/14/20

CASE TYPE: CLASS ACTION

PAGE COUNT: 16

CASE NOTE

Return Date: No return date scheduled
Hearing Date: 6/15/2020 9:30 AM - 9:30 AM
Courtroom Number: 2502
Location: District 1 Court
Cook County, IL

12-Person Jury

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

FILED
2/14/2020 4:20 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH01884

HARRY SHANOV, individually, and on)
behalf of all others similarly situated,)
)
Plaintiff,)
)
v.) No. 2020CH01884
)
WALGREENS BOOTS ALLIANCE, INC., and)
WALGREEN CO.,)
)
Defendants.) Jury Trial Demanded

8493283

CLASS ACTION COMPLAINT

Plaintiff HARRY SHANOV, individually, and on behalf of all others similarly situated, by and through counsel at Zimmerman Law Offices, P.C., and Parad Law Offices, P.C., brings this action against Defendants WALGREENS BOOTS ALLIANCE, INC. and WALGREEN CO., as follows:

PARTIES

1. Plaintiff HARRY SHANOV (“Plaintiff”) is a natural person and citizen of the State of Illinois.
2. Defendant WALGREENS BOOTS ALLIANCE, INC. (“WBA”) is a Delaware corporation, with its principal place of business located at 108 Wilmot Road, Deerfield, Illinois 60015. WBA does business in the State of Illinois.
3. Defendant WALGREEN CO. (“Walgreen Co.”) is an Illinois corporation, with its principal place of business located at 200 Wilmot Road, Deerfield, Illinois 60015. Walgreen Co. does business in the State of Illinois.

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4. According to WBA's Fiscal Year 2018 Annual Report, "on December 31, 2014, [WBA] became the successor of Walgreen Co." and Walgreen Co. is now a subsidiary of WBA. WBA and Walgreen Co. will be hereinafter referred to as "Walgreens." Walgreens provides retail pharmacy services to Illinois consumers.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209(a)(1) (transaction of any business within this State), section 2-209(a)(7) (the making or performance of any contract or promise substantially connected with this State), section 2-209(b)(4) (corporation doing business within this State), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

6. Venue is proper in this County pursuant to 735 ILCS 5/2-101, because many of the acts and transactions giving rise to this action occurred in this County. Defendants are (a) authorized to conduct business in this County and have intentionally availed themselves of the laws and markets within this County through sale in this County of the antihypertensive medication at issue in this case; (b) conduct substantial business in this County; and (c) are subject to personal jurisdiction in this County. Moreover, Defendants have places of business in this County. 735 ILCS 5/2-102(a).

SUBSTANTIVE ALLEGATIONS

7. Valsartan tablets or Valsartan/HCTZ ("Valsartan") is a generic hypertension and heart failure oral medication. Valsartan is a "drug" as defined by the Illinois Food, Drug, and Cosmetic Act. 410 ILCS 620/2.4.

8. On July 13, 2018, the United States Food and Drug Administration ("FDA") announced a nationwide recall of Valsartan due to detection of an impurity, N-

nitrosodimethylamine (“NDMA”). NDMA is not merely an impurity; it is classified as a probable human carcinogen (a substance that could cause cancer) based on results from laboratory tests.

9. Tablets of Valsartan contained as much as 20,000 nanograms of NDMA, which is over 200 times the 96 nanogram acceptable limit for daily NDMA consumption. On average, Valsartan was found to have NDMA levels several times higher than the maximum allowable daily limit of 96 nanograms.

10. The amounts of NDMA in the recalled Valsartan exceeded the maximum acceptable levels for NDMA set by the FDA. Under the FDA’s maximum acceptable level of NDMA, one in 100,000 persons are diagnosed with cancer. Under the amounts of NDMA in the Valsartan, that increased nearly 13 times to one in 8,000.

11. On or around September 13, 2018, testing of Valsartan uncovered an additional impurity—N-Nitrosodiethylamine (“NDEA”)—which is a known animal and suspected human carcinogen.

12. Both NDMA and NDEA are carcinogens. Given this increased risk of cancer, consumers would not purchase Valsartan if they knew it contained unsafe levels of NDMA or NDEA that may be injurious to their health. The fact that Valsartan contains unsafe levels of NDMA and NDEA is a material fact to consumers. This is particularly the case with drugs that treat chronic conditions, such as Valsartan, because the exposure occurs and the effects accumulate over the course of a long period of time, compounding the magnitude of the harm.

13. As part of Walgreens’ pharmacy services, Walgreens sells Valsartan to its customers, and Walgreens sold Valsartan that contained unsafe levels of NDMA and NDEA to Plaintiff and Class members in Illinois.

14. Walgreens made misrepresentations and omissions of material fact regarding the fact that its Valsartan contained unsafe levels of NDMA and NDEA.

15. Walgreens drafted and created a Personal Prescription Information document (“PPI Document”) and Walgreens provided the PPI Document to Plaintiff and Class members along with the Valsartan at the time they purchased the Valsartan from Walgreens. The PPI Document accompanied the Valsartan. The PPI Document affirmatively stated that customers were receiving Valsartan, and only Valsartan, as opposed to Valsartan that contained elevated and unsafe levels of NDMA and NDEA. Plaintiff and Class members reviewed the PPI Document when they purchased the Valsartan from Walgreens.

16. The PPI Document provided to and reviewed by Plaintiff and Class members in conjunction with their purchase of Valsartan was created, drafted, printed, and distributed by Walgreens. As such, Walgreens affirmatively represented that Valsartan did not contain unsafe levels of NDMA and NDEA.

17. Because the presence of unsafe levels of NDMA and NDEA in Valsartan was a material fact to consumers, including Plaintiff and Class members, Walgreens made material misrepresentations by representing and warranting that Valsartan did not contain unsafe levels of NDMA and NDEA.

18. Moreover, by offering for sale and selling Valsartan to Plaintiff and Class members, Walgreens represented that its Valsartan was safe and fit for its ordinary and intended uses, subject to disclosed side effects and risks as required by applicable law and standards. Because the Valsartan that Walgreens sold was not safe, was unfit for its ordinary and intended uses, and contained impurities and carcinogens in unreasonably high levels, those representations were false, misleading, and deceptive.

19. Walgreens failed to inform its customers that, due to the unsafe levels of NDMA and NDEA, consuming Valsartan posed unreasonable and undisclosed risks to Plaintiff and Class members.

20. Walgreens did not disclose the material facts concerning the unsafe levels of NDMA and NDEA and the carcinogenic effects of these substances on the PPI Document that it provided to Plaintiff and Class members prior to or at the time of purchase. Walgreens did not disclose these material facts to Plaintiff or Class members at any time or in any manner.

21. Walgreens knew that elevated and unsafe levels of NDMA and NDEA in Valsartan, and the risks associated therewith, were material facts to consumers, including Plaintiff and Class members, and Walgreens intended for Plaintiff and Class members to rely on the foregoing misrepresentations and omissions of material fact in deciding to purchase Valsartan.

22. Plaintiff and members of the Class purchased Valsartan from Walgreens.

23. When Plaintiff and members of the Class purchased the Valsartan, they saw and relied upon Walgreens' misrepresentations and omissions of material fact described above, and reasonably believed that the Valsartan did not contain unsafe levels of NDMA and NDEA, and did not pose any risks greater than those associated with consuming pure Valsartan.

24. Plaintiff's and Class members' reliance on Walgreens' aforementioned misrepresentations and omissions was reasonable, given their expectation that the Valsartan they purchased would not contain unsafe levels of NDMA and NDEA, and it would be safe and fit for its ordinary and intended uses, subject to disclosed side effects and risks as required by applicable law and standards.

25. Contrary to Walgreens' misrepresentations, the Valsartan that Plaintiff and Class members purchased contained unsafe levels of NDMA and NDEA, was unfit for its ordinary and intended uses, and was worth less than it would have been had it conformed to Walgreens' representations.

26. Had Plaintiff and members of the Class known that the Valsartan they purchased contained unsafe levels of NDMA and NDEA, they would not have purchased the Valsartan.

27. Plaintiff and members of the Class were injured in the form of money they paid to purchase Valsartan from Walgreens.

28. Plaintiff, individually, on behalf of the Class, brings this lawsuit seeking the financial damages sustained in purchasing Valsartan that contained unsafe levels of NDMA and NDEA, as well as for recovery of reasonable attorneys' fees and costs.

FACTS RELATING TO PLAINTIFF

29. Plaintiff has been prescribed Valsartan since January 2004, and he purchased Valsartan from a Walgreens store in Illinois.

30. When Plaintiff purchased Valsartan from Walgreens, he reviewed the PPI Document provided to him by Walgreens.

31. In reliance upon Walgreens' misrepresentations set forth above, when Plaintiff purchased Valsartan, he reasonably believed that it did not contain elevated and unsafe levels of NDMA and NDEA, it would be safe and fit for its ordinary and intended uses, and it did not pose an undisclosed increased risk of injurious health consequences, such as cancer.

32. In reasonable reliance upon Walgreens' misrepresentations and omissions of material fact set forth above, after Plaintiff purchased Valsartan, he consumed it because he reasonably believed that it did not contain elevated and unsafe levels of NDMA and NDEA, it

would be safe and fit for its ordinary and intended uses, and it did not pose an undisclosed increased risk of injurious health consequences, such as cancer.

33. Had Plaintiff been aware of the fact that the Valsartan he purchased contained elevated and unsafe levels of NDMA and NDEA, was not safe and fit for its ordinary and intended uses, and posed an undisclosed increased risk of injurious health consequences such as cancer, he would not have purchased or consumed the Valsartan. This is also true for all Class members.

34. Plaintiff was harmed because he paid money to purchase Valsartan that he would not have otherwise purchased. This is also true for all Class members.

CLASS ALLEGATIONS

35. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801 seeking damages on behalf of himself and an Illinois statewide Class of similarly situated individuals, defined as follows:

All Illinois consumers who purchased Valsartan from Walgreens in Illinois.

Excluded from the Class are: (1) Walgreens, Walgreens' agents, subsidiaries, parents, successors, predecessors, and any entity in which Walgreens or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any person who has had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

36. **Numerosity:** Upon information and belief, the members of the Class are so numerous that joinder would be impracticable. The exact number of members of the Class is

presently unknown and can only be ascertained through discovery because that information is exclusively in the possession of Walgreens. Members of the Class can be easily identified through Defendants' records or by other means, such as pharmacy records, prescription records, medical records, self-identification, etc. Plaintiff estimates that the Class consists of thousands of Illinois consumers, as in 2018, 1.5 million people in the U.S. took contaminated valsartan.¹

37. **Commonality and Predominance:** There are several questions of law and fact common to the claims of Plaintiff and the members of the Class. Those common questions predominate over any questions that may affect individual members of the Class. Common questions include, but are not limited to, the following:

- a. Whether Walgreens made misrepresentations and omissions of material fact regarding whether the Valsartan that it sold contained elevated and unsafe levels of NDMA and NDEA;
- b. Whether Walgreens made misrepresentations and omissions of material fact regarding whether the Valsartan that it sold would be safe and fit for its ordinary and intended uses;
- c. Whether Walgreens knew and intended that Plaintiff and members of the Class would rely on its misrepresentations and omissions regarding the Valsartan that it sold;
- d. Whether Walgreens knew or should have known that the Valsartan it sold contained elevated and unsafe levels of NDMA and NDEA;
- e. Whether Walgreens' conduct violated the Illinois Consumer Fraud and Deceptive Business Practices Act;
- f. Whether the Valsartan was sold in violation of the implied warranty of merchantability;
- g. Whether Walgreens was unjustly enriched by its misconduct; and
- h. Whether, and to what extent, Plaintiff and members of the Class sustained damages as a result of Walgreens' conduct alleged herein, and the measure of those damages.

¹ Anna Edney & Margart Cronin Fisk, *Popular Heart Drugs Tainted With Carcinogens Face a Wave of Lawsuits*, BLOOMBERG (April 23, 2019, 11:01 PM), <https://www.bloomberg.com/news/articles/2019-04-24/valsartan-recall-tainted-heart-drugs-face-lawsuits-over-cancer>

38. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class. All claims in this matter are based on the same legal and factual issues. Plaintiff and members of the Class purchased recalled Valsartan and were subjected to Walgreens' uniform course of conduct.

39. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class, and Walgreens has no defense unique to Plaintiff.

40. **Superiority:** Class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. Further, it would be virtually impossible for the individual members of the Class to obtain effective relief because the damages suffered by individual members of the Class are likely to be relatively small, especially given the burden and cost of individually conducting the complex litigation necessitated by Walgreens' actions. Even if members of the Class were able or willing to pursue individual litigation, a class action would still be preferable due to the fact that a multiplicity of individual actions would likely increase the expense and time of litigation given the complex legal and factual controversies presented in this Complaint. A class action, on the other hand, provides the benefits of fewer management difficulties, single adjudication, economy of scale, and comprehensive supervision by a single Court, and would result in reduced time, effort and expense for all parties and the Court, and ultimately, the uniformity of decisions.

COUNT I

Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*)

41. Plaintiff incorporates by reference the allegations in paragraphs 1-40 as if fully set forth herein.

42. Plaintiff brings this Count on behalf of himself and members of the Class.

43. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*, provides protection to consumers by mandating fair competition in commercial markets for goods and services.

44. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the Illinois Uniform Deceptive Trade Practices Act. 815 ILCS 505/2.

45. The ICFA applies to Walgreens’ acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

46. Walgreens, Plaintiff, and members of the Class are “persons” as defined by section 505/1(c) of the ICFA.

47. Plaintiff and members of the Class are “consumers” as defined by section 505/1(e) of the ICFA.

48. The Valsartan sold by Walgreens constitutes “merchandise” under the meaning of section 505/1(b) of the ICFA, and the offering for sale and sale of Valsartan to Plaintiff and the Class members constitutes “trade” or “commerce” under the ICFA.

49. Walgreens’ misrepresentations and omissions, as set forth above, were likely to mislead a reasonable consumer and constituted deceptive acts and practices in violation of the ICFA, including but not limited to 815 ILCS 510/2(a)(5) (prohibiting representations “that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or

connection that he or she does not have”); 815 ILCS 510/2(a)(6) (prohibiting representations “that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand”); 815 ILCS 510/2(a)(7) (prohibiting representations “that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another”).

50. Walgreens’ practice of selling Valsartan containing elevated and unsafe levels of NDMA and NDEA was an unfair practice prohibited by the ICFA because it was immoral, unethical, oppressive, unscrupulous, and violated statutes and regulations intended to protect the public. *See* 815 ILCS 505/2.

51. But for Walgreens’ misrepresentations, omissions of material fact, and unfair conduct described herein, Plaintiff and members of the Class would not have purchased the Valsartan from Walgreens.

52. By employing the misrepresentations omissions of material fact, and the unfair conduct described herein, Walgreens misled, deceived, and caused Plaintiff and members of the Class to purchase Valsartan that they would not have purchased had they known the Valsartan contained elevated and unsafe levels of NDMA and NDEA, and it was not safe and fit for its ordinary and intended uses.

53. As a direct and proximate result of Walgreens’ violations of the ICFA, Plaintiff and members of the Class suffered economic damages in the form of monies spent to purchase Valsartan from Walgreens that they would not have spent had they known the true nature of the Valsartan.

54. When Plaintiff and members of the Class purchased Valsartan from Walgreens, their purchases were made in Illinois, and their payments were received in Illinois. All of the

decision-making which led to Walgreens' misrepresentations and omissions of material fact described herein emanated from Walgreens' headquarters in Illinois.

55. Plaintiff, on behalf of himself and the Class, seeks an order awarding Plaintiff and members of the Class actual damages, punitive damages, interest, reasonable attorneys' fees, expenses, and costs to the extent allowable by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action established by 735 ILCS 5/2-801, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class, and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class, and against Defendants;
- D. Awarding Plaintiff and the Class actual and punitive damages, in addition to reasonable attorneys' fees and costs; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II

Breach of Implied Warranty of Merchantability

56. Plaintiff incorporates by reference the allegations in paragraphs 1-40 as if fully set forth herein.

57. Walgreens, as the seller of Valsartan, impliedly warranted to Plaintiff and the members of the Class, that the Valsartan was merchantable and:

- i. Would pass without objection in the trade under the contract description;
- ii. Was of fair average quality within the description;
- iii. Was fit for the ordinary purposes for which such goods are used; and

iv. Conformed to the promises or affirmations of fact made on the PPI Document.

810 ILCS 5/2-314(2)(a)-(c),(f).

58. Contrary to those implied warranties, the Valsartan contained elevated and unsafe levels of NDMA and NDEA, and posed an undisclosed increased risk of injurious health consequences such as cancer. Walgreens breached the implied warranties of merchantability with respect to the Valsartan that Walgreens sold to Plaintiff and members of the Class.

59. Plaintiff and members of the Class purchased the Valsartan in reliance upon Walgreens' implied warranties.

60. Had Plaintiff and members of the Class known that the Valsartan they purchased contained elevated and unsafe levels of NDMA and NDEA, they would not have purchased it.

61. As a direct and proximate result of Walgreens' breaches of the implied warranties of merchantability, Plaintiff and members of the Class suffered economic damages in the form of monies spent to purchase Valsartan from Walgreens that they would not have spent had they known the true nature of the Valsartan.

62. Plaintiff, on behalf of himself, and the Class seeks an order awarding Plaintiff and members of the Class actual damages, interest, reasonable attorneys' fees, expenses, and costs to the extent allowable by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action established by 735 ILCS 5/2-801, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class, and his undersigned counsel as Class Counsel;

- C. Entering judgment in favor of Plaintiff and the Class, and against Defendants;
- D. Awarding Plaintiff and the Class actual damages, in addition to reasonable attorneys' fees and costs; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III
Unjust Enrichment

63. Plaintiff incorporates by reference the allegations in paragraphs 1-40 as if fully set forth herein.

64. Plaintiff brings this Count on behalf of himself and the Class.

65. Walgreens has been unjustly enriched to Plaintiff's and the Class members' detriment as a result of Walgreens' unlawful and wrongful retention of money conferred by Plaintiff and the Class members who were unaware that the Valsartan they purchased contained elevated and unsafe levels of NDMA and NDEA, such that Defendants' retention of their money would be inequitable.

66. Walgreens' unlawful and wrongful acts, as alleged above, enabled Walgreens to unlawfully receive monies Walgreens would not have otherwise obtained.

67. Plaintiff and the Class members have conferred benefits on Walgreens, which Walgreens has knowingly accepted and retained.

68. Walgreens' retention of the benefits conferred by Plaintiff and the Class members would be against fundamental principles of justice, equity, and good conscience.

69. Plaintiff and the Class members seek to disgorge Walgreens' unlawfully retained profits and other benefits resulting from its unlawful conduct, and seek restitution and rescission for the benefits conferred by Plaintiff and the Class members.

70. Plaintiff and the Class members are entitled to the imposition of a constructive trust upon Walgreens, such that its unjustly retained profits and other benefits are distributed equitably by the Court to and for the benefit of Plaintiff and the Class members.

71. Based on the foregoing, Plaintiff and the Class members have been injured in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action established by 735 ILCS 5/2-801, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class, and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class, and against Defendants;
- D. Disgorging all of the money that Walgreens received from Plaintiff's and Class members' purchases of Valsartan;
- E. Awarding Plaintiff and the Class reasonable attorney's fees and costs; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

Plaintiff HARRY SHANOV, individually, and on behalf of all others similarly situated,

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Walgreens Sold NDMA-, NDEA-Contaminated Valsartan to Illinois Consumers](#)
